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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

JENNIFER C., et al.,

Petitioners,

v.

THE SUPERIOR COURT OF ORANGE
COUNTY,

Respondent;

ORANGE COUNTY SOCIAL SERVICES
AGENCY et al.,

Real Parties in Interest.

G053582

(Super. Ct. No. 16DP0068)

O P I N I O N

Original proceedings; petitions for a writ of mandate/prohibition to challenge an order of the Superior Court of Orange County, Craig E. Arthur, Judge. Petitions denied.

Vincent Uberti for Petitioner Jennifer C.

Sharon Petrosino, Public Defender, Laura J. Jose, Robert B. Waltman and Dennis M. Nolan, Deputy Public Defenders, for Petitioner Rodney C.

Leon J. Page, County Counsel, Karen L. Christensen and Jeannie Su, Deputy County Counsel, for Real Party in Interest, Orange County Social Services Agency.

Linda O'Neil for the Minor.

* * *

Jennifer C. (mother) and Rodney C. (father) seek extraordinary writ relief (Cal. Rules of Court, rules 8.450, 8.452) from the juvenile court's orders at the disposition hearing removing their daughter M.C. (born October 2011) from their custody, bypassing reunification services (Welf. & Inst. Code, § 361.5, subds. (b)(10)), (11); all statutory references are to this code), and scheduling a section 366.26 selection and implementation hearing for September 6, 2016. The parents contend the juvenile court erred by not leaving M.C. in mother's care with protective orders restricting the child's contact with father. They also argue the court erred in applying the bypass provisions because mother made reasonable efforts to address the issues in a prior dependency case involving M.C.'s siblings and the issues involving M.C. were different from those raised in the prior dependency case. Our review discloses no basis to overturn the court's orders and therefore we deny the requested relief.

I

FACTS AND PROCEDURAL BACKGROUND

In January 2016, the Orange County Social Services Agency (SSA) filed a petition, later amended, alleging four-year-old M.C. came within the jurisdiction of the juvenile court (§ 300, subds. (b), (j)) based on a substantial risk M.C. would suffer serious physical harm based on her parents' failure to protect her, the inability to provide regular care due to the parents' mental illness or substance abuse, and sibling abuse. Specifically, SSA alleged father had been arrested for multiple offenses including child

endangerment, obstructing a public officer, carrying a concealed firearm in his vehicle, carrying a loaded firearm in a public place, and possession of ammunition. Law enforcement agencies were investigating whether father had discharged a firearm at occupied vehicles from his car. At the time of father's arrest, officers found M.C. alone in father's car with the engine running outside a marijuana dispensary. She was wearing a backpack containing a loaded semiautomatic handgun registered to mother, and a marijuana bong.

Father denied shooting at vehicles. He told officers the firearm belonged to mother, and he usually kept it in the trunk for protection. On the day of the incident, he drove with M.C. from their residence to the marijuana dispensary, took money out of the backpack, put the backpack containing the firearm and bong on the backseat, left the car running, and went into the dispensary. Father admitted he had a felony in Texas for arguing with family members, but denied there was any domestic violence in his home.

The petition also alleged the parents previously had their parental rights terminated to six children (four children together and two of mother's children) in Fresno County. According to the sustained allegations of the prior petition, father physically abused some of the children, mother failed to protect the children, and father engaged in domestic violence against mother. The petition also cited father's substance abuse and mental health issues. Reunification services were provided, but the parents failed to reunify with the children and parental rights were terminated in 2013.

Mother reported she worked during the day and had no knowledge of the incident. Father watched M.C. while she worked. She saw M.C.'s backpack that morning and did not see a gun or a bong in it. She had last seen the gun in the family's storage unit a few days earlier and was unaware father had taken it. She sometimes kept the gun in the car's trunk, unloaded, and in a bag. Father bought the gun for her because she was frightened.

M.C. had a severe burn scar on the inside of her left hand. Mother explained M.C. accidentally burned herself with a hot iron in 2013, and the child received treatment at a Dallas hospital. An orthopedist examined M.C.'s hand and informed mother the child would require reconstructive plastic surgery. Mother declined to sign an authorization allowing the social worker to obtain the child's medical records, but stated she would look for the paperwork and provide it to her attorney.

At the time of detention, M.C. had a scratch with a scab on her left arm, and stated that was where her father hit her. M.C. apparently suffered from speech and developmental delays, which made it difficult to interview her. The parents, however, did not believe she had any developmental problems.

Mother refused to discuss the current allegations, but agreed to discuss her social history and the services she needed to complete. She and father married in 2007, and they had been together over 10 years. Mother denied father had substance abuse or mental health issues, or that she was the victim of domestic violence. The parents acknowledged they had participated in therapy in the earlier dependency case.

At the detention hearing, the court ordered SSA to provide reunification services. The social worker provided referrals for parenting classes, counseling, and drug testing.¹

The parents' therapist reported in April 2016 the parents were hesitant and ambivalent about exploring the issues that brought them to the attention of juvenile authorities. They would not complete the therapist's surveys or answer her questions. She asked them to leave their second session because they would not stop using their cell

¹ Mother's drug tests were negative. Father, who possessed a current medical marijuana card, consistently tested positive for marijuana. The parents asserted father did not smoke marijuana in the home, but he did supervise M.C. while under the influence of the drug, usually in the mornings while she slept.

phones and refused to discuss the issues leading to SSA's involvement. She reported the parents felt they did not need therapy and refused to discuss any issues related to the case.

SSA gradually increased supervised visits to eight hours a week, presumably because the parents acted appropriately and interacted positively with the child. They also called daily to see how she was doing.

In late April 2016, mother pleaded no contest to the petition's allegations and father submitted. The court sustained the petition under section 300, subdivisions (b) and (j). Concerning disposition, the social worker recommended bypassing reunification efforts.

At the disposition hearing in May 2016, the social worker testified the family's history and circumstances of father's arrest demonstrated he placed M.C. in dangerous situations and mother could not protect M.C. from father. Although mother completed some services in the prior dependency case, including a parenting class, mental health assessment, therapy, and domestic violence classes, she failed to reunify with her children and she continued to maintain a relationship with father despite his domestic violence. The parents refused to discuss issues from the prior dependency case, and the social worker had no information they did anything to address their issues following the 2013 termination of their parental rights to the siblings.

Although in the current case mother provided a certificate she completed a parenting class, the social worker could not assess whether mother had benefitted because mother communicated minimally with the social worker. Concerning therapy, in the prior case mother was guarded and had difficulty engaging in the sessions. Mother was currently enrolled in therapy and had attended three sessions, but her current participation in therapy was similar to her prior participation. She was guarded and did not want to talk about anything, including the issues that brought the child into protective custody. Asked about her treatment goals, mother stated "I don't know" or "I don't want to talk about it."

The social worker believed mother would not protect M.C. from the danger posed by father. Nor did mother indicate a willingness to live apart from him. They remained married and living together, and sometimes visited M.C. together. Mother temporarily separated from father while participating in reunification services during the siblings' dependency, but Mother sided with father in the current case and did not believe the allegations.

The social worker also faulted mother concerning the burn scar on M.C.'s hand. Although a hand specialist could not determine whether the burn was intentional or accidental, the specialist reported M.C. would need plastic surgery. Mother provided no treatment records, and no evidence to support her claim she was about to seek treatment when authorities detained M.C.

Mother testified she did not believe father had physically abused her older children. and she denied he engaged in any domestic violence. She believed the Fresno court wrongfully removed M.C.'s siblings from their custody. She separated from father during the prior reunification process because he was not complying with the court ordered services and the court ordered the parents to live separately. During the separation, they had contact because she was pregnant with M.C. and father checked on her while she was in the hospital. They reconciled after parental rights were terminated. Father smoked marijuana, but not around her and she claimed he was not under the influence of marijuana while supervising M.C.

Concerning the current allegations, mother asserted she bought the gun for herself in early 2015 and it was in her possession most of the time. She usually kept it unloaded, locked in a gun case, and stored in a closet at home, with the ammunition locked up separately. Father knew where she kept it and could access it. She denied telling the police father bought her the gun or that she sometimes kept it in a bag in the car trunk. She also denied telling investigators she was the only one with access to the

gun. Mother refused to believe M.C. was wearing a backpack with a gun in it or that father was shooting at others.

Concerning M.C.'s scar, mother testified M.C. was about a year and a half old when she touched an iron while mother was in the restroom. Mother took M.C. to the hospital, and to several follow-up appointments, but the doctor did not refer her to a specialist or see the need for surgery. Nevertheless, mother had been looking for doctors to remove the scar to avoid future self-esteem issues.

Mother admitted she was unwilling to discuss her past history with the therapist because she did not feel like what happened with her other children was relevant to the current case. She also was not comfortable discussing the current allegations with the therapist because she felt it was unnecessary and might incriminate father in his criminal case.

Mother did not understand why M.C. had been removed from her custody. She believed the family's past history was not relevant and the social worker ignored the fact things had changed and M.C. was not abused or neglected. Mother acknowledged she and father had discussed separation and she was willing to abide by court orders to separate from father so M.C. could live with her. She could pay the rent and accommodate her work hours with M.C.'s school hours. M.C. was happy to see the parents at visits and ran to them. They ate and played with M.C., bathed her, watched her try on the clothes the parents brought, and watched movies together. When visits ended, M.C. cried, said she wanted to go home, and did not want the parents to leave.

The paternal grandfather testified father lived with him in Fresno County in 2011. He falsely accused father of physical abuse and domestic violence even though he never witnessed any abuse. The grandfather explained he made up the allegations because he was suffering from psychological problems, including paranoid delusions, and had stopped taking his medication.

The juvenile court declared M.C. to be a dependent child, removed custody from the parents, and vested custody with SSA. The court found both parents had made minimal progress toward alleviating or mitigating the causes necessitating placement. The court denied reunification services under section 361.5, subdivisions (b)(10) and (11) as to both parents. It found neither parent had made a reasonable effort to treat the problems that led to the removal of the older siblings. The court also found it would not be in M.C.'s best interests to provide services. The court set a section 366.26 selection and implementation hearing to provide a permanent plan for the child.

II

DISCUSSION²

A. Substantial Evidence Supports the Juvenile Court's Finding No Reasonable Means Existed to Protect M.C. Without Removing Her From Mother's Physical Custody

The parents challenge the sufficiency of the evidence to support the juvenile court's finding no reasonable means existed to protect M.C. without removing her from mother's physical custody. They assert father's conduct posed the primary danger to M.C., and the only risk presented by mother was her failure to protect M.C. from father. Because mother testified she was willing to separate from father as she had during the prior dependency case, the court had a reasonable alternative to M.C.'s removal by placing M.C. with mother on the condition father not reside with her, and ordering mother not to allow father to have unauthorized contact with M.C. Substantial evidence supports the court's decision to remove M.C. from mother's custody and set a permanency hearing.

Section 361 provides that where the child "is adjudged a dependent child of the court on the ground that the minor is a person described by Section 300, the court may limit the control to be exercised over the dependent child by any parent"

² Each parent joins and adopts by reference the other's petition to the extent it inures to his or her benefit. (Cal. Rules of Court, rule 8.200(a)(5).)

(§ 361, subd. (a).) “A dependent child shall not be taken from the physical custody of his or her parents . . . with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence of any of the following circumstances . . . : (1) There is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's . . . physical custody. . . . The court shall consider, as a reasonable means to protect the minor, each of the following: (A) The option of removing an offending parent or guardian from the home.” (§§ 361, subd. (c), 213.5 [juvenile court has jurisdiction to exclude person from the dwelling of a person who has care, custody, and control of a child].)

““After the juvenile court finds a child to be within its jurisdiction, the court must conduct a dispositional hearing. [Citation.] At the dispositional hearing, the court must decide where the child will live while under the court's supervision.” [Citation.] “A removal order is proper if based on proof of parental inability to provide proper care for the child and proof of a potential detriment to the child if he or she remains with the parent. [Citation.] ‘The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child.’ [Citation.] The court may consider a parent’s past conduct as well as present circumstances.” [Citation.]” [¶] ““Before the court issues a removal order, it must find the child's welfare requires removal because of a substantial danger, or risk of danger, to the child's physical health if he or she is returned home, and there are no reasonable alternatives to protect the child.”” [Citations.] ‘Whether the conditions in the home present a risk of harm to the child is a factual issue.’ [Citation.]” (*In re Lana S.* (2012) 207 Cal.App.4th 94, 105 (*Lana S.*)).

The juvenile court’s dispositional findings are subject to a substantial evidence standard of review. (*Lana S.*, 207 Cal.App.4th at p. 103.) “We review the

entire record to determine whether substantial evidence supports the court's finding. We resolve all conflicts, and draw all reasonable inferences in support of the findings.

[Citation.] ‘We do not reweigh the evidence, evaluate the credibility of witnesses or resolve evidentiary conflicts. The appellant has the burden to demonstrate there is no evidence of a sufficiently substantial nature to support the findings or orders.’

[Citation.]” (*Ibid.*)

Substantial evidence supports the juvenile court’s finding no reasonable means existed to protect M.C. without removing her from mother’s physical custody. The court reasonably rejected the alternative of placing M.C. with mother with an order keeping M.C. away from father. Mother’s statements and testimony support the court’s conclusion the degree of mother’s loyalty to father prevented her from acknowledging or recognizing the risks he posed to M.C. She did not accept the prior dependency findings father had physically abused the older children, she denied domestic violence occurred, and she believed no basis existed to remove M.C.’s siblings from her custody. She also refused to believe M.C. was wearing a backpack with the gun in it or that father was shooting at others. Her testimony differed from her earlier statements concerning who purchased the gun and where it was stored. Mother refused to discuss the current allegations with the therapist because she felt it might incriminate father in his criminal case. Mother admitted having contact with father during the prior reunification process even though a court order prohibited it, and the parents reconciled soon after the court terminated parental rights in the earlier case. Ample evidence demonstrates mother would not follow a court order to prevent father from having unauthorized contact with M.C.

B. Substantial Evidence Supports the Juvenile Court’s Finding The Parents Had Not Made a Reasonable Effort to Treat the Problems That Led to Removal of the Siblings

The parents also argue the juvenile court erred in applying the reunification bypass provisions because the problems leading to removal in the current case differed

from those in the prior case, and the parents made reasonable efforts to alleviate the prior problems. We disagree.

Section 361.5 provides in relevant part: “(b) Reunification services need not be provided to a parent . . . when the court finds, by clear and convincing evidence, any of the following: [¶] . . . [¶] (10) That the court ordered termination of reunification services for any siblings or half siblings of the child because the parent . . . failed to reunify with the sibling or half sibling after the sibling or half sibling had been removed from that parent . . . pursuant to Section 361 and that parent . . . is the same parent . . . described in subdivision (a) and that, according to the findings of the court, this parent . . . has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child from that parent. . . . [¶] (11) That the parental rights of a parent over any sibling or half sibling of the child had been permanently severed, and this parent is the same parent described in subdivision (a), and that, according to the findings of the court, this parent has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half sibling of that child from the parent.”

Section 361.5 requires a two-part analysis. First, the juvenile court must find the parent failed to reunify with a sibling, and second, the parent subsequently failed to make reasonable efforts to correct the problems leading to removal. (*Cheryl P. v. Superior Court* (2006) 139 Cal.App.4th 87, 97) The court must consider the “*duration, extent and context* of the parent's efforts, as well as any other factors relating to the *quality and quantity* of those efforts, when evaluating the effort for reasonableness.” (*R.T. v. Superior Court* (2012) 202 Cal.App.4th 908, 914-915; *In re Albert T.* (2006) 144 Cal.App.4th 207, 220 [reasonable efforts to treat prong of section 361.5, subd. (b)(10) is directed to issue or issues confronting parent in a prior dependency proceeding that led to removal of the sibling]; *In re D.H.* (2014) 230 Cal.App.4th 807, 815-817 [no

evidence father's alcohol use, anger management problems, or domestic violence led to siblings removal on prior occasion].)

SSA took M.C. into protective custody because at the time of father's arrest four-year-old M.C. was unattended in a car wearing a backpack containing a loaded firearm. The petition also cited father's use of marijuana and his mental health issues. In the prior case, the issues included father's physical abuse of children, domestic violence between the parents with father as the aggressor, father's substance abuse, father's mental health issues, and mother's failure to protect. Substantial evidence in the record demonstrates father's drug use, mental health issues, and dangerous and violent behavior carried over from the prior case, as did mother's failure to protect her child from father's behavior. Father's conduct, and mother's statements and testimony in support of father, coupled with mother's failure to engage in services pending the disposition hearing in the current case, demonstrate the parents had not made reasonable efforts to treat the problems that led to removal of the siblings in the prior case. The court did not err in bypassing reunification services. (*R.T.*, *supra*, 202 Cal.App.4th at p. 914 [reasonable effort language in the bypass provisions does not mean minimal effort by a parent to address the problems leading to removal will suffice].)

C. Substantial Evidence Supports the Juvenile Court's Finding Reunification Not in M.C.'s Best Interest

The parents also assert the juvenile court erred in determining reunification was not in M.C.'s best interest. Section 361.5, subdivision (c) provides the juvenile court "shall not order reunification for a parent . . . described in paragraph[s] . . . (10), [and] (11) . . . of subdivision (b) unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the child." "Once it is determined one of the situations outlined in subdivision (b) applies, the general rule favoring reunification is replaced by a legislative assumption that offering services would be an unwise use of governmental resources." (*In re Baby Boy H.* (1998) 63 Cal.App.4th 470, 478.) In

determining whether reunification is in the child's best interests, the juvenile court should consider the parent's history, the gravity of the problem that led to the dependency, a parent's current efforts and fitness, the strength of the bonds between the child and the parent, and the child's need for stability and continuity. (*In re William B.* (2008) 163 Cal.App.4th 1220, 1228; *In re Ethan N.* (2004) 122 Cal.App.4th 55, 64-68.)

Mother argues, "If Mother and [M.C.] do not reunify, [M.C.], who is only four years of age, will be deprived of a relationship with a Mother whom she loves and with whom she shares a bond. Avoiding such a traumatic event is clearly in Minor's benefit." Mother emphasizes M.C. has lived with mother since birth and mother poses no risk to M.C. aside from her failure to protect M.C. from father. Mother argues M.C.'s conduct during their visits demonstrates the bond she felt with them. At the end of visits, M.C. cried and said she wanted to go home, and said things like "don't go, don't go" to the parents, which showed she looked to her parents for comfort and wanted to return to their care. Mother also cites the court's comments at the disposition hearing: "I have no doubt that there is a bond between mom, dad and [M.C.], and that's why this court is pained the most because I don't like denying services when clearly [M.C.] knows her parents and loves her parents."

The parents' history demonstrated father posed a risk of violence to children in his care, and mother had failed to protect her children from this risk. The juvenile court found the loving bond between M.C. and her parents did not "override[] the gravity of the problem, and the gravity of the history, and the gravity of the lack of progress between January and now The parents just could not step up and do some things" Despite M.C.'s attachment to her parents, the court reasonably determined it was not in M.C.'s best interests to order reunification services given the parents' severe past and current problems, their failure to benefit from prior reunification efforts, their lack of progress in the current case, and M.C.'s need for stability and continuity. (*William B.*, *supra*, 163 Cal.App.4th at p. 1228.)

III

DISPOSITION

The petitions seeking extraordinary relief from the juvenile court's order bypassing reunification services and setting a section 366.26 selection and implementation hearing are denied, as is the request for a stay of the section 366.26 hearing scheduled for September 6, 2016.

ARONSON, J.

WE CONCUR:

MOORE, ACTING P. J.

IKOLA, J.